UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	January 16, 2014
Debtor.	.	2:00 p.m.
. . . . .		

BENCH OPINION
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE CLERK: All rise. Court is in session. Please be seated. Case Number 13-53846, City of Detroit, Michigan.

THE COURT: Counsel, may I ask you to put your appearances on the record at the lectern, please?

MS. BALL: Good afternoon, your Honor. Corinne Ball, Jones Day, for the City of Detroit.

MR. SHUMAKER: Good afternoon, your Honor. Greg Shumaker of Jones Day for the City of Detroit.

MR. HERTZBERG: Robert Hertzberg, Pepper Hamilton, City of Detroit.

MS. ENGLISH: Good afternoon, your Honor. Caroline Turner English from Arent Fox for Ambac.

MR. ARNAULT: Good afternoon, your Honor. Bill Arnault from Kirkland & Ellis on behalf of Syncora.

MR. MARRIOTT: Good afternoon, your Honor. Vince Marriott, Ballard Spahr, on behalf of EEPK and affiliates.

MR. GORDON: Good afternoon, your Honor. Robert Gordon and Jennifer Green, Clark Hill, on behalf of the Detroit Retirement Systems.

MR. JAMES: Good afternoon, your Honor. Mark James of Williams, Williams, Ratter & Plunkett on behalf of Financial Guaranty Insurance Company.

MR. GOLDBERG: Good afternoon, your Honor. Jerome Goldberg on behalf of interested party, David Sole.

MR. CLARK: Your Honor, Jared Clark, Bingham

McCutchen, UBS AG.

MR. PLECHA: Good afternoon, your Honor. Ryan Plecha from Lippitt O'Keefe on behalf of the retiree association parties.

THE COURT: Anyone here on behalf of Bank of America Merrill Lynch?

MR. WATSON: Good afternoon, your Honor. Scott Watson, Warner, Norcross & Judd, on behalf of UBS and Bank of America Merrill Lynch.

THE COURT: Okay. Thank you, sir. Is there anyone on the phone that would like to place an appearance on the record?

MR. FRIMMER: Your Honor, this is Rick Frimmer from Schiff Hardin on behalf of FMS.

THE COURT: Did we get that? Okay. This matter is before the Court on two motions. The first is the motion to approve the city's assumption of its optional termination agreement -- forbearance agreement and optional termination agreement with the swap counterparties. This was negotiated in large part pre-petition and then amended post-petition. The second matter that's before the Court is a motion to approve the city's request for certain post-petition financing. The Court will address that first motion first.

The motion is a bit of a hybrid motion in that it is a motion to assume an executory contract and also to approve

a settlement under Rule 9019. Of course, the motion to approve the assumption is to be adjudged under Section 365 of the Bankruptcy Code. It's unnecessary to linger over the -- whether the standards of Section 365 apply or Rule 9019 applies. The Court concludes it's the same business judgment test regardless. It is appropriate, therefore, to consider the following factors upon which the Court notes the parties appear to agree. The first is the likelihood of the success of any potential litigation that might result if the settlement is denied. The second is the complexity, expense, and delay of such litigation. The third is any collection issues that appear, and the fourth involves the interests of the city's creditors and its residents.

The parties have cited to the Court several cases that describe in more detail the Court's obligation when approval of a settlement is requested. In particular, those authorities cited by Ms. English, Ambac's attorney, appear to concisely state what the Court's burden is, so, for example, the Sixth Circuit's decision in In re. MQV, Inc., 477 Federal Appendix 310, 313, Sixth Circuit, 2012, is cited, quoted, "When determining whether to approve a proposed settlement, the bankruptcy court may not rubber stamp the agreement or merely rely on the trustee's word that the settlement is reasonable. Reynolds versus Commissioner of Internal Revenue, 861 F.2d 469, 473, Sixth Circuit, 1988. Rather, the

bankruptcy court is charged with an affirmative obligation to apprise itself of the underlying facts and to make an independent judgment as to whether the compromise is fair and equitable," close quote.

In In re. Rankin, 438 Federal Appendix 420, 426, Sixth Circuit, 2011, the Court quoted at some length from the Supreme Court's decision in Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 1968. Quote, "There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has appraised -- apprised himself of all of the facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation."

In light of these authorities, the Court has undertaken the required inquiry. It has gone to some length to form an intelligent and objective opinion of the

probabilities of the ultimate success of any proposed litigation that the city might undertake, and the Court will review that in a moment.

First, to review the proposed settlement in the forbearance and optional termination agreement, this agreement permits the termination of the swap agreements upon payment by the city of $165 million plus so-called breakage costs of $4.2 million. The counterparties agree to forbear from terminating the swaps and from trapping gaming revenues prior to the city's optional termination. The total termination liability on the swaps as of December 31st, 2013, was $247 million. The $165 million settlement amount represents approximately 67 percent of that amount. The termination liability, of course, is dependent upon interest rates, which have changed from time to time during the course of these proceedings and even, of course, since December 31st, 2013. Regardless, under the most recent settlement that the city asked the Court to approve, the settlement amount remains at this $165 million amount or $169.2 million amount. The agreement would allow the city continued access to the casino revenues of approximately $15 per month and permits it to unwind the swap contracts at this discounted price. It also obviously eliminates potential litigation between the city and the swap counterparties, UBS and Bank of America Merrill Lynch.

So the Court will now review the likelihood of success of any of the various claims that the city might make against the swap counterparties and those swap counterparties' various defenses in that litigation all in the event, of course, that this motion is denied.

Initially, the city might well claim that the swap counterparties' lien on the casino revenue pursuant to the 2009 collateral agreement is void under state law because the purpose for which the casino revenue was pledged is not a permissible purpose under MCL Section 432.212, the Michigan Gaming Control and Revenue Act. Under that Act, the permissible uses are, (i) The hiring, training, and deployment of street patrol officers; (ii) Neighborhood and downtown economic development programs designed to create local jobs; (iii) Public safety programs such as emergency medical services, fire department programs, and street lighting; (iv) Anti-gang and youth development programs; (v) Other programs that are designed to contribute to the improvement of the quality of life in the city; (vi) Relief to the taxpayers of the city from one or more taxes or fees imposed by the city; (vii) The costs of capital improvements; and, (viii) Road repairs and improvements.

The city might claim, therefore, that this statute does not permit gaming revenues to be used as security for a loan, especially as security for a loan that does not fit one

of these permissible uses under the Gaming Act.

In defense to this claim, the swap counterparties might well argue that the pledge of the casino revenue here in this case was permissible under Subpart (v) of MCL Section 432.212 as a program designed to contribute to the improvement of the quality of life in the city and Subpart (vi) as relief to the taxpayers of the city from one or more taxes or fees imposed by the city. They would argue that this is evidenced by Detroit City Code Sections 18-16-1 through 4. These municipal code sections provide that the pledge was necessary because the city was in default on the swap agreement in January of 2009 and was facing the threat of a large termination payment. Moreover, Section 4(k) specifically provides that, one -- quote, "one, pledging the wagering tax property will improve the quality of life in the city beyond what it would be in the absence of such action; and, two, pledging the wagering tax property will increase" -- sorry -- "will reduce taxes levied or imposed by the city or to be levied or imposed by the city from what they would be in the absence of such action," close quote.

In addition to these City Council findings, the executive director of the Michigan Gaming Control Board stated in a 2009 letter to the city's outside gaming counsel that, "Upon review of this matter, I do not find any compliance issues at this time." Finally, in addition, the

swap counterparties would point to an opinion letter from Lewis & Munday, a law firm retained by the city in 2009, stating that the pledge of the casino revenue, quote, "will constitute authorized purposes," close quote, under the Michigan Gaming and Control Act.

Now, to these responses by the swap counterparties, the city might respond that the connection between curing the default under the swap agreement in 2009 and improving the quality of life of the city -- of the citizens of Detroit is a tenuous connection. They would -- or the city would further argue that it is not at all clear that the legislative findings by the Detroit City Council or the opinion letters of the attorneys can validate the collateral agreement if it otherwise represents an impermissible use of the casino revenues under the Michigan Gaming and Control Act. In a second claim that the city might make, the city might argue that the casino revenue lien did not survive the filing of the bankruptcy petition, so under this claim, the city would argue that even if the swap counterparties' lien on the casino revenues is valid under state law, that lien does not survive the bankruptcy filing under Section 552(a) of the Bankruptcy Code because it is not a statutory lien and is not proceeds.

In response, the swap counterparties might argue that the collateral agreement did create a statutory lien in

the casino revenue because it was created by the enactment of the City Council of Municipal Code Sections 18-16-1 through 7. In response to that argument by the swap counterparties, the city might respond that the City Council only enacted these sections to effectuate the terms of the collateral agreement to which the parties had already agreed. For example, Section 18-16-12 states, quote, "All obligations of the city under this ordinance and the definitive documents are contractual obligations," close quote.

The city would further argue here that even if the lien does survive -- or excuse me -- does not survive the filing of the petition under Section 552 -- I'm sorry. I have my party wrong here. The swap counterparties would argue that even if the lien does not survive the filing of the petition under Section 552, the lien would survive the filing of the bankruptcy petition under Section 928 of the Bankruptcy Code. That section provides, quote, "Notwithstanding section 552(a), special revenues acquired by the debtor after the commencement of this case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case"; thus, the swap counterparties would argue that the lien may survive if the casino revenues constitute special revenues.

In response to that, the city would argue that the

definition of "special revenues" in Section 902(2)(B) does not apply to casino revenues because casino revenues were not created specifically for the purpose of financing the collateral agreement. Special revenues, the city would note, include special excise taxes under Section 902(b)(2), but the casino revenues constitute general excise taxes.

The city would further argue that the Bankruptcy Code safe harbors for swap agreements in several sections of the Bankruptcy Code, including Section 362(b)(17) and Section 560, do not apply to either the swap agreement or to the 2009 collateral agreement. Thus, the city would argue that the swap counterparties may not trap the casino revenue during the pendency of the bankruptcy case. Section 362(b)(17) provides in pertinent part that the automatic stay does not operate as a stay of the exercise by a swap participant or a financial participant of any contractual right related to any swap agreement. Similarly, Section 560 provides in pertinent part that the exercise of any contractual right of any swap participant to cause the liquidation, termination, or acceleration of one or more swap agreements shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title. The city would claim that these safe harbors do not apply, however, because the safe harbors only protect swap

participants, as that term is defined in Section 101(53C), quote, "An entity that, at the time of the filing of the petition, has an outstanding swap agreement with the debtor," close quote. The city would claim that if the swap counterparties had a valid swap agreement with anyone, it was with the service corporations, not the city.

The swap counterparties would respond in defense to this claim that they were actually in an agreement with the city. The city controlled the service corporations, they would maintain, and remains responsible for any of the service corporations' obligations under the swap agreement and the collateral agreement.

The city would also claim that the swap harbors do not apply if the swap agreement and the collateral agreement are void ab initio; that is to say, from the beginning. The idea is here that if the agreements are void from the beginning, ab initio, under state law, they are simply not swap-related -- there are simply no swap-related contractual rights to enforce. Moreover, if the swap counterparties' alleged rights are avoided, it will be by operation of state law, not by any court proceeding under the Bankruptcy Code.

On the other hand, the swap counterparties would argue in defense that this argument by the city ignores the purpose of the safe harbors, which is to protect the nationwide derivatives markets from the bankruptcy of a

single party. In response to that, the city would argue that the problem with this defense is a logic problem. They would ask how can the safe harbors protect contractual rights that do not exist under state law? While a distinction must be drawn or may be drawn between void and voidable agreements, the city argues that it has litigable claims that the swap agreement and the collateral agreement are void and have been from the outset.

Of course, the advantageous result to the city and the reason to pursue this claim is that if its claim to invalidate the collateral agreement is sustained, it would free up the gaming revenue for use in providing city services and also perhaps to allow this property -- these revenue -- these gaming revenues to serve as collateral for loans.

In the absence of the settlement, the city might also pursue a potential claim challenging the underlying swap agreements themselves. The city would argue that the swaps themselves are invalid because the city did not comply with the Revised Municipal Finance Act called Act 34, MCL Section 141.2101 and following. Specifically, MCL Section 141.2317, which governs swap transactions entered into by municipalities, requires either (a) that the interest under the agreement constitutes a limited tax full faith and credit pledge from the general funds of the municipality or (b) subject to any existing contracts, the interest under the

agreement shall be payable from any available money or revenue sources, including revenues that shall be specified in the agreement, securing the municipal security in connection with which the agreement is entered into. And the city would contend that neither of those conditions for a city to enter into a swap transaction were met here.

In response, the swap counterparties would assert that Act 34 does not apply because the swap agreements were between the swap counterparties and the service corporations, not the city. In response to that, the city might argue that the service corporations are a sham and should be disregarded, and they would also assert that the agreement between the city and the service corp. is itself a swap agreement as that term is broadly defined in the Bankruptcy Code.

In response -- in partial response to at least the argument that service corporations are a sham, the swap counterparties might argue the doctrine of in pari delicto or unclean hands may prevent the city from arguing that the service corporations should be disregarded. As noted, the city might also claim that the agreements between the service corporations and the city were themselves swap agreements covered by Act 34 but that the service contracts are themselves unenforceable because they, too, fail to comply with Act 34. The swap counterparties might argue that the

city has powers under the Home Rule Act which could independently authorize the swap agreements, and, of course, the swap counterparties would certainly argue that the same safe harbor provisions of the Bankruptcy Code that the Court discussed earlier in connection with the city's challenge to the collateral agreement apply to protect the swap agreements themselves.

The city's challenge to invalidate the swap agreements has potentially very advantageous consequences for the city. If successful, not only would the city be released from any obligation to the swap counterparties, but the city might also recover the alleged $300 million that it has already paid to the swap counterparties. In response, of course, the swap counterparties might have an in pari delicto defense to that claim.

As we drill down further here, we find a question that the parties did not actually address, and that is what if the collateral agreement is found to be void under the Michigan Gaming Act or that it does not survive the bankruptcy filing under Sections 552 and 928 but that the swap agreement is enforceable? The question may become will the city then be able to treat the termination liability as an unsecured claim and impair it in the plan process, or will the safe harbor provisions require the city to pay the claim in full even though it's unsecured? It appears to the Court

that it is more likely that Section 560 of the Bankruptcy Code does require the termination claim to be paid in full even if it is unsecured. This makes much higher, of course, the stakes of the city's claim that the swap agreements are void under Act 34.

There is also, as Mr. Goldberg argued, a potentially broader series of challenges to the swap agreements and the collateral agreement, for that matter, as well, that they were induced by fraud, are subject to equitable subordination, or that they were unconscionable. And, of course, the readily identifiable defense to these by the swap counterparties would be that the city was well-represented in these transactions, that these transactions were negotiated at arm's length, and that there was no fraud or coercion or undue influence or any wrongdoing on their part.

The Court must emphasize, having outlined these various claims and defenses, that it is not for the Court at this time to decide these issues, and that's true even though the depth of the parties' presentations on them were just about as if motions for summary judgment were before the Court. Rather, the Court is simply to evaluate the likelihood of success. The Court has carefully considered that question and has determined that the city is reasonably likely to succeed on its challenges to the collateral agreement under the Gaming Act and the Bankruptcy Code. The

Court further concludes that the city is reasonably likely to succeed on its challenge to the swap agreements under PA 34. As to the city's other potential claims, while they are certainly not frivolous, their likelihood of success is less apparent on the record before the Court at this time.

The Court will now review the other factors to be taken into account in determining whether to approve this settlement. Addressing the delay, complexity, and cost of the litigation, the Court must conclude, of course, that these are substantial considerations here. Certainly the issue of the validity of the trap of the casino revenues can be promptly resolved by this Court through summary judgment. It is less clear, of course, how quickly appeals would be resolved. The same can be said concerning the city's challenge to the swap agreements under Public Act 34. Any other challenges, however, that the city might pursue are very fact-intensive and would require substantial discovery, some perhaps even international in scope, and that litigation might take years if the city decides to pursue that. The expenses, especially the legal expenses, of filing a lawsuit challenging the collateral agreement and the underlying swap agreements, for filing a motion for a preliminary injunction, and for filing a motion for summary judgment on the legal issues involved in challenging these agreements would be undoubtedly substantial but, given the amount of money at

stake, relatively insignificant.

Addressing now the issue of collectibility, the Court concludes that nothing in the record suggests that this is any issue here except that, as noted earlier, if the swap counterparties are unsecured and if their claims are not protected by Section 560 of the Bankruptcy Code, their termination fee may be subject to impairment through the plan of adjustment.

Addressing now the interest of the public and creditors, in weighing this factor, the Court considers the fact that the city is requesting the Court's approval to replace its old obligations under the swap agreements and the collateral agreement, which the city concedes as to which it has litigable claims against the enforcement of them, with new obligations that would be fully protected both by security interests and by court approval. The Court stated earlier and states again that it will not participate in or permit the city to perpetuate the very kinds of hasty and imprudent financial decision-making that led to the disastrous swaps and COPs transactions. Those practices have already caused great harm to the city's creditors and to its citizens. In the Court's view, one goal of this Chapter 9 case is to end these practices so that the city can truly recover from its past mistakes and move forward, and the Court intends to conduct itself accordingly. In case

parenthetically this dicta needs any further clarification, let me state that the Court intends to carefully scrutinize the feasibility of any plan of adjustment.

At the same time, it is also true that the residents of the city have an interest in city leadership that focuses all of its attention on the city's future and its revitalization. This is, indeed, a very important consideration, as the Court has previously emphasized. And let there be no doubt that litigation can be very distracting, and the Court must also consider that several creditors have objected to this motion, and their views and the depth of their views are very important in the Court's analysis.

On balance, the Court concludes that the motion to assume the forbearance agreement should be denied. The Court rationally balances the city's claims against the swap parties with the swap parties' defenses to those claims, considers the complexity of the litigation and the expense and time of it and the interests of the city's residents and creditors. In so doing, it must conclude that the $169 million settlement to the swap counterparties is just too high a price to pay for the city to put this issue behind it. It is higher than the highest reasonable number. If it were close, the Court would approve it, but by any rational analysis, it's not close. The Court looked for every way it

could to approve the settlement. As the city argued, the law prefers settlements. But it could not find a way. It's just too much money, and the Court must insist that any settlement be rational, as the law itself requires. In its eligibility opinion, the Court found that the city had entered into a series of bad deals to solve its financial problems. The law says that when the city filed this bankruptcy, that must stop. It also says that this Court must be the one to stop it, if necessary. It is necessary here. Accordingly, the motion is denied. In these circumstances, it is unnecessary to address the consent rights issue.

Turning now to the motion for post-petition financing, 11 U.S.C., Section 364(c), provides, "If a trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt - (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or section 507(b) of this title; (2) secured by a lien on property of the estate that is not otherwise subject to a lien." The city seeks to borrow $285 million from Barclay and to grant Barclay a lien in casino revenues, income tax revenues, utility tax revenues, and water and sewerage revenue. Of that amount, $165 million was proposed to go to the swap counterparties to settle that

claim or those claims, and $120 million would go for quality of life improvements, which may include increase in police staffing, purchase of emergency vehicles, blight removal, and updating the city's technology resources. Because the motion to assume the forbearance agreement and settlement agreement is denied, the request for the loan to fund that settlement must be denied as well. However, the Court finds that the request for approval to borrow $120 million on a secured basis should be granted with conditions. Specifically, the Court finds that the city has established by a preponderance of the evidence that this loan is in the best interest of the city; that it needs the money; that the terms are market terms and the best available to the city; that they were negotiated in good faith; and that they were negotiated at arm's length. Indeed, the Court finds that there was no substantial contradictory evidence on these points.

The objecting parties raise these arguments: one, the city did not attempt to obtain an unsecured loan; two, the city did not provide the City Council with sufficient information to evaluate the loan and did not comply with the legal requirements for disclosure to the City Council; three, the city has not adequately explained the proposed use of the quality of life loan proceeds; and, four, this approval should await the plan confirmation process.

With respect to the first objection, the Court

concludes that the city has adequately established that the unsecured credit would not have been available to the city. The objecting parties cite cases holding that the city was required to actually attempt to obtain unsecured credit and that the city did not do that here. The Court finds these cases unpersuasive because they impose a requirement that is simply not in the statutory language of Section 364(c). That section simply requires the Court to find that the debtor has established by a preponderance of the evidence that it is unable to obtain unsecured credit. There are, of course, many ways to prove that fact. Showing that the debtor actually attempted and failed to do that is only one way to prove it. In this case, the Court concludes that there was credible evidence that the city is unable to obtain unsecured credit. That evidence makes sense, in the Court's experience, and it was uncontradicted in the evidence. Accordingly, the Court finds that the city has established by a preponderance of the evidence that it is unable to obtain unsecured credit.

With respect to the second objection, Public Act 436, Sections 19(1) and (2), require the emergency manager to submit his proposed action to the City Council. The City Council then has a period of time to propose comparable or better terms for the action. Plainly, the adequacy of the disclosure to the City Council should be determined based on

whether the disclosure by the emergency manager allowed the city to take advantage of its statutory opportunity to propose an alternative. Here the Court concludes that the disclosures that the city made to City Council, especially as they pertained to the proposed interest rates, were sufficient to permit it to evaluate the loan and for the City Council to go out into the marketplace to attempt to obtain an alternative. Accordingly, the Court concludes that there was substantial compliance with PA 436, and this objection is overruled.

It is next asserted that the city has not adequately explained the uses of the loan proceeds. In the Court's view, this objection overlaps with the question of the conditions that the Court has determined must be placed on the loan. The problem arises because the record is contradictory on what the proceeds of this loan would be used for. In recognition of the limitations on the use of gaming revenues under state law, some evidence suggests that the city will use the proceeds for, quote, "quality of life," close quote, purposes. Other evidence, however, suggests that the proceeds will simply be working capital. The city contends that even if gaming revenue is provided as security, the limitations of the Gaming Act do not apply because Section 364 authorizes this Court to approve the loan without regard for any state law limitations. The Court rejects this

view of its authority under Section 364 and concludes that any offer of security for a loan under Section 364 must comply with state law unless, of course, Section 364 expressly provides otherwise. As the city points out, the Court can, under Section 364, give a senior or priming lien to existing liens which might be or would be in derogation of state law; however, nothing in Section 364 suggests that a Court can allow a municipality to use its property in violation of state law. The Court does conclude that offering gaming revenue as security for a loan would comply with the Gaming Control Act but only if the proceeds of the loan that are so secured are used as limited by state law. Accordingly, if this loan is secured by gaming revenues, the proceeds must be used for the purposes identified in the Gaming Act. The Court must caution the city here, however. While the Act does permit the use of gaming revenues to improve quality of life in the city, that authorization cannot be applied so broadly that it effectively eliminates the statutorily imposed limitations. Specifically, nothing in the Act authorizes proceeds to be used for working capital. To enforce this state statutory limitation, the Court will condition this approval on a process by which the city gives 14 days' written and filed notice of its intent to use the proceeds during which interested parties can object on the grounds that the proposed use is not consistent with

the Gaming Act. The Court would then schedule a prompt hearing and promptly resolve the objection. Consistent with Section 904, however, the Court will not review any aspect of the use of the proceeds other than its compliance with the Gaming Act.

In the alternative, of course, subject to Barclays' approval, the city could use as security other property for this loan such as other revenue streams that carry with them no such restrictions under state law. In that event, the Court -- excuse me. In that event, the process that the Court outlined would not be necessary and would not be imposed.

The Court further cautions the city that if it does decide to pursue only the quality of life loan at this time, it may want to consider whether under state law it is necessary to present the revised loan to the City Council under PA 436 and to the Emergency Loan Board for its approval. This caution, however, is not intended to be a ruling on this issue.

Finally, the Court will overrule the objection that this loan should be approved only in the context of plan confirmation. The city has determined out of necessity to pursue this loan now. Section 364 of the Bankruptcy Code certainly permits the city to do that. Under Section 904 it is not for this Court to review the city's political and

governmental decisions, which pursuing this loan plainly is. Accordingly, this objection is overruled.

Finally, the Court must emphasize that the parties should not interpret this Court's denial of this particular settlement to mean that they should not continue to attempt to resolve these issues through negotiations. They absolutely should. The Court agrees that the settlement of the swaps claims is better for everyone than litigation and hopes that everyone still agrees with that. If the city feels the need to pursue immediate litigation, so be it, but even so, litigation and negotiation can and should be pursued at the same time. In any event, the Court strongly encourages the parties to continue to negotiate.

At this time, the Court is going to conduct a closed conference with counsel, and so I'm going to ask everyone in the courtroom who is not an attorney in the case to leave the courtroom. We're also going to shut down the closed circuit feeds and turn off CourtCall.

(Proceedings concluded at 2:49 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett January 18, 2014

Lois Garrett